

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

iRACING.COM MOTORSPORT SIMULATIONS LLC,)	
a Delaware Limited Liability Company, Plaintiff)	
)	
V.)	Civil Action No.
)	05-11639 NG
TIM ROBINSON, individually and d/b/a)	
www.ow-racing.com and www.torn8oalley.com ,)	
Defendant)	

DEFENDANT TIM ROBINSON'S MOTION TO DISMISS
FOR LACK OF PERSONAL JURISDICTION AND FOR IMPROPER VENUE

The defendant, Tim Robinson, individually and d/b/a www.ow-racing.com, www.torn8oalley.com and www.first-racing-sucks.com ("Robinson"), respectfully represents that the Court lacks personal jurisdiction over Robinson and this case has been filed in an improper venue. Robinson moves that the case be dismissed, on the ground that plaintiff knowingly filed this case in an improper venue for no apparent reasons other than to harass Robinson, make it difficult for him to defend himself, and put him to needless expense. Alternatively, Robinson moves that the case be transferred to the United States District Court in the District of Texas where he resides.

Robinson submits his Affidavit and a Memorandum in support of this Motion.

By its attorneys,

Joseph F. Ryan BBO# 435720
Lyne Woodworth & Evarts LLP
600 Atlantic Avenue
Boston, MA 02210
Telephone 617/523-6655 - Telecopy 617/248-9877
E-mail: jryan@LWELaw.com

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iRACING.COM MOTORSPORT SIMULATIONS LLC,)	
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V.)	Civil Action No.
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Defendant)	

AFFIDAVIT OF DEFENDANT TIM ROBINSON
IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS
FOR LACK OF PERSONAL JURISDICTION AND FOR IMPROPER VENUE

I, Tim Robinson, upon oath depose and say as follows:

Personal data

1. I live in Richardson, Texas. I have lived here since I retired from the U.S. Navy in 1996. I have two daughters who attend college.

2. I do not reside in Massachusetts. I have no residence and no mailing address in Massachusetts. The last time that I was in Massachusetts was in 1985.

3. I am employed by a wireless messaging company in Plano, Texas. I have no place of business or agents in Massachusetts. I have no office and no telephone listing in Massachusetts. I have no property, no bank accounts and no other assets in Massachusetts. I am not qualified to do business in Massachusetts.

4. I do not employ any person in Massachusetts. Since relocating to Texas in 1996, I have never sold anything in Massachusetts and I have not shipped or delivered any products into Massachusetts.

5. I am a long-time avid fan of NASCAR racing. I became interested in simulated (“Sim”) NASCAR racing in late 1996.

Papyrus’ NASCAR2003

6. In February 2003, I purchased a copy of NASCAR2003 that was being marketed by Papyrus. I purchased the copy here in Texas. Papyrus subsequently released “a patch” in September 2003 that ultimately unlocked the capability for multiple types of physics to be used within the game. Prior to that time, only “CUP” physics were available. Additionally, a tool named “Sandbox”, issued by Papyrus, was made available to the Sim racing community. Using the “Sandbox” tool, one can export track geometry from NASCAR2003 and read it, and potentially modify an existing track or create a completely new one. I am aware that numerous people, including myself, have created new tracks for use with the NASCAR2003 game, using the Sandbox or other similar available tools.

7. Upon information and belief, Papyrus ceased business some time in early 2004, and it appeared that NASCAR2003 would no longer be available for sale. Indeed, NASCAR2003 has not been offered for sale by any successor to Papyrus. The only copies of NASCAR2003 available for purchase today are copies sold on eBay and similar sites.

8. After Papyrus ceased selling NASCAR2003, I continued to develop additional tracks that could be used with the NASCAR2003 game. I also developed numerous completely different models of cars that could be used with the game. The cars differ not only in appearance, shape and style, but also in the physics of those cars, so that they respond differently on the tracks. In short, they are completely different and nothing like driving a Winston/Nextel Cup style car.

Confidential Disclosure Agreement

9. I am also being accused of violating a Confidential Disclosure Agreement signed between myself and FIRST-Racing.net.

a. The following is an excerpt from an email sent to me on the December 29th 2004, once I was approved as a "Beta Tester" for the then FIRST-racing.net software:

"Dear First Beta-Tester,

This email contains the links and files you will need to run in the upcoming beta season. These files are unique to each individual. This means that if your files get out to the public we will know who has leaked them. The file is in your name and there is also a code inside the code that will tell us everything we need to know to trace any leaked files back to you. How they get out is not our concern. If you leak them or they are stolen from you, in any way, you will be held accountable and we will take every legal recourse available to us.

We need you to also understand this. We are testing ideas and formulas. We are not testing this physics engine or car modeling. This mod you are getting is NOT our future product. This mod was created for us to have some fun that relates somewhat to what our future goals are. We are using N2003 to do this test but understand our future product will be a whole new sim. Not the mod you will be driving now."
[Emphasis added.]

10. The above email was forwarded to me by a person named Shannon Whitmore apparently acting in some official capacity with iRacing/FIRST-Racing.net at the time. I believe that Shannon Whitmore sent the email to me from Ohio. It is clear from the email that the files being referred to are modified NASCAR2003 files and that the beta testing I was to be doing was simply testing ideas and formulas. Additionally, it is clear that anything I was doing at that time was not going to be part of the future product. I was not given any information about anything new, rather it was simply a modified version of the existing NASCAR2003 game to

“test concepts and ideas.” I stopped being a beta tester towards the end of January after being presented with a divorce petition, and because of pending travel requirements of my current job.

11. Paragraph 3 of the Confidential Disclosure Agreement states as follows:

“The parties hereto understand that each may now market or have under development products which are competitive with products or services now offered or which may be offered by the other. Subject to the terms and conditions of this Agreement, discussions and/or communications between the parties hereto will not serve to impair the right of either party to develop, make, use, procure, and/or market products or services now or in the future which may be competitive with those offered by the other, nor require either party to disclose any planning or other information to the other.”

12. The Open Wheel (“OW”) Sprint Car Mod and its NO-CD patch was first made available to the public in September 2004 on a number of web sites including www.ow-racing.com, prior to my application to be a beta tester. In my application I disclosed that I was the Owner of www.ow-racing.com. The FIRST-Racing.net website, www.first-racing.net warns, both on the news page, <http://www.first-racing.net/index.php?/First-Racing/news/>, and on the Beta Testing Application, www.first-racing.net/index.php?/First-Racing/application/ that all information would be verified. During the entire application process, no mention of allegedly infringing files was ever made.

Web Sites

13. In June 2004, I created the www.ow-racing.com web site, as a host site for a community of Sim racing enthusiasts. In August of 2004, the first version of the OWR Mod was released using non-modified physics, and non-modified executables. During the Summer/Fall of 2004, using a standard hex editor and trial and error methods, in an effort to bring a more real

experience as it relates to Open Wheel ("OW") Style Cars and the existing Open Wheel Mod. I modified the physics in the NASCAR2003 executable and developed a modification to NASCAR2003. I released it during the winter of 2004/2005 as a beta product to a select group of beta testers. The product was not intended for sale. I intended to distribute it freely.

14. None of the tracks or beta models can be used without the Original NASCAR2003 program and CD.

15. In March 2005, after learning that First-Racing had sued another Sim racing enthusiast, I endeavored to engage Steve Myers in discussions whereby First-Racing and the Sim racing community could peacefully co-exist. However, the exchanges with Mr. Myers concerning my web site became confrontational. About the same time frame, another employee of First-Racing contacted me to try and persuade me to do some work for First-Racing, but I had no interest in working for First-Racing

16. I presently own and operate the web sites www.ow-racing.com, www.torn8oalley.com, and www.first-racing-sucks.com.

17. The purpose of www.ow-racing.com is not to facilitate the propagation and support of NASCAR®2003 derivative versions. Rather, the website serves to provide information to the Sim racing community about developments in the Open Wheel Racing side of NASCAR2003, and to provide free hosting of tracks, car files, graphical add-ons, setups, alternate car sets, etc which are made available to registered members of the website. Additionally, there is a discussion forum where people can post questions/comments related to virtually anything but with a focus on Sim Racing

18. I originally stumbled across the web site www.torn8oalley.com in 2002. It hosted live racing among Sim car enthusiasts. I became involved with the people hosting the site. In

2003 I arranged with the owner of the web site to place the race servers with me, at my place of work here in Plano, Texas. In early 2005, the owner tired of the work involved, and transferred responsibility for operation of the site and race servers to me. I have continued hosting of the race servers at my work site in Plano, Texas, as well as the maintenance of www.torn8oalley.com.

19. The purpose of www.torn8oalley.com is not to facilitate the propagation and support of NASCAR®2003 derivative versions. Rather the website serves to provide information to the general Sim Racing community concerning NASCAR2003, but is also specifically designed for the Members of Torn8oAlley.com that are signed up to participate in online racing leagues against each other. Online Racing League Members are also granted access to special "Members Only" discussion forums, and special events held periodically.

a. When this lawsuit was filed, "Online Racing League Members" at Torn8oAlley.com were required to pay a membership fee of either \$9.95 or \$14.95 per month depending on their level of participation. There are 25 active "Online Racing League Members." Of those 25, 10 are members who paid at the \$14.95 level, 9 are members who paid at the \$9.95 level, and the remainder is exempt. Online Racing League Members who assist with administration of individual leagues, or who serve as members of the Board of Directors were exempt from dues for the duration of their service in that capacity. The total number of exempt members was 6. The remaining "registered members" did not pay any fees as they simply are there either to download free content or to participate in discussion forums related to NASCAR2003.

b. Membership fees that were collected were specifically used to help offset the costs of running a pair of "24/7" race servers as well as to perform maintenance for hardware/software upgrades as necessary. Membership fees also helped to partially offset the cost of web hosting

for www.torn8oalley.com. Any leftover funds were used to subsidize the cost associated with an annual gathering of Online Racing League Members at the Texas Motor Speedway during the first spring race usually held in April of each year. I have not retained or used any money for myself personally.

c. After the lawsuit was filed, a change was made to solely a “donation” based system. This change was in the planning stage when the lawsuit was filed. Presently no one is required to pay any specific membership amount.

d. Online Racing League Members are required to disclose their location when applying for membership. Currently, none of the Online Racing League Members are from Massachusetts.

20. After iRacing sent threatening emails to me, I started the www.first-racing-sucks.com website in March of 2005. I did so to provide a forum for members of the Sim Racing community and anyone else interested, where they could speak their mind about the complete and utter lack of respect that Dave Kaemmer and others associated with iRacing/FIRST showed in calling people of the Sim Racing community “hackers and thieves”, among other things. The website also allowed people to lend their support of iRacing/FIRST if they so chose to do so. Not many did. The website www.first-racing-sucks.com has never released any allegedly infringing works. The website, does however, have a link to a file made to look like it was infringing. In fact, the file still exists and is being published today. If anyone at iRacing/FIRST has actually made an attempt to run the executable contained within the zip file they would have discovered what was actually there was a collection of sound files for the PTA Mod released by some former members of Project Wildfire.

21. Two of the websites, www.ow-racing.com and www.torn8oalley.com that I operate are hosted on computer servers of VirtBiz.com, located in the State of Texas. The website, www.first-racing-sucks.com is hosted in Arizona by GoDaddy.com

22. I do not advertise for any of the web sites in any print media or by sending out any email advertisements for the web sites. The web sites are accessible and known only by persons who know of their existence or who find them by a search technique, or by chance, or by links from other similar sites.

23. Anybody who registers onto the web sites may download content on the web sites free of charge. Nothing is sold on the web sites. Users have the option to make a donation to maintaining the site, but nobody has ever chosen to do so.

24. The content that can be downloaded consists of files that Sim users have created and voluntarily have submitted to the web site. They include new racing car designs, new track designs and graphics, setups, etc. None of our web servers capture any information about who downloads from the web site, or what they download. All of the websites have basic statistical packages that simply accumulate specific page hits by year, month, day, and in some case hour of the day. The statistics packages also gather information on what browser type and operating system people use. There is no information gathered on specific individuals other than what they provide in their respective profiles.

25. Except as mentioned above I personally pay for the web sites out of my personal funds.

26. I have done nothing to purposefully avail myself of any of the benefits of Massachusetts. I, like countless others, simply created a Web site and permitted anyone who could find it to access it.

iRacing

27. Attached hereto as Exhibit 1 is a copy of the "Welcome" notice on the home page of www.first-racing.net. It discloses that John Henry, owner of the Boston Red Sox, is one of the founders of iRacing. I have raced against him in on-line races.

28. Attached hereto as Exhibit 2 is a copy of a filing that, upon information and belief, iRacing made with the Massachusetts Secretary of State. It indicates that iRacing is a foreign corporation and that iRacing did not register as a foreign corporation doing business in Massachusetts until June 13, 2005.

SUBSCRIBED AND SWORN TO under the pains and penalties of perjury this

10th day of January 2006.

Timothy D. Robinson
Tim Robinson

NOTARY JURAT CERTIFICATE

On this 10th day of JANUARY, 2006, before me, the undersigned notary public, personally appeared TIM ROBINSON, proved to me through satisfactory evidence of identification, which were DRIVERS LICENSE, MILITARY ID to be the person whose name is signed on the preceding or attached document, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of (his) (her) knowledge and belief.

[S E A L]

Public

Kari Jo Wennholz
exp - 2-3-07 Notary



Exhibit 1

Welcome To FIRST-Racing.net!

Here at FIRST-Racing.net you will find the finest PC auto racing simulations ever produced. And, you will not only have the opportunity to drive your favorite race cars on your favorite race tracks but you'll also be able to race wheel to wheel with drivers from all over the globe.

FIRST-Racing.net was founded in June of 2004 by John Henry, principal owner of the Boston Red Sox, and David Kaemmer, co-founder of Papyrus Racing Games. They set a very simple mission; to produce the finest PC auto racing simulations ever. Regardless of your past involvement in auto racing or auto racing simulations, you'll be able to do it all at FIRST-Racing.net. You will be able to learn the basics through a FIRST-Racing.net racing school and go on to win races in a FIRST-Racing.net sanctioned race series.

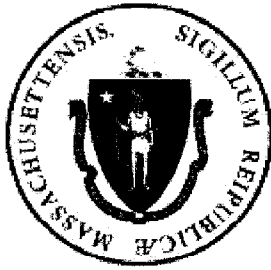
After forming the Federation of International Racing and Sanctioning Trust, the FIRST in FIRST-Racing.net, Henry and Kaemmer set to work by acquiring the rights to the award winning source code that Kaemmer helped to create at Papyrus Racing Games. An avid participant in the auto racing simulation community, Henry explains his partnership with Kaemmer and the subsequent launch of FIRST-Racing.net. "Dave Kaemmer is a legend in the world of racing simulation. When it comes to producing realism in the driving experience, no one does it better. He has a proven track record in creating the best racing simulations ever produced. His Grand Prix Legends and NASCAR Racing 2003 titles are the standard by which all auto racing simulations are judged. FIRST-Racing.net will create the next generation of what is already a highly sophisticated and exhilarating platform for open-wheel and all other forms of auto racing."

For Kaemmer, an accomplished open wheel racer in his own right, this is the next step in his 15 year career in auto racing simulation. "No one else is making true cost-effective PC-based auto racing simulations that are useful and effective for training real race car drivers. The Papyrus simulation code is state of the art and has already helped hone the skills of quite a few professional and thousands of amateur racers. Working with us at FIRST-Racing.net are former Papyrus engineers and production staff who collectively have over 50 years of experience in producing the world's leading racing simulations for personal computers. FIRST-Racing.net will deliver the next step."

And, that next step will incorporate new technology to heighten the realism as well as a sanctioning body to launch a truly global online sport. FIRST-Racing.net...GET READY!

Enter your email address to join the FIRST-Racing.net mailing list and visit often for updates!

Exhibit 2



**The Commonwealth of Massachusetts
William Francis Galvin**

Secretary of the Commonwealth
One Ashburton Place, Boston, Massachusetts 02108-
1512
Telephone: (617) 727-9640

**IRACING.COM MOTORSPORT SIMULATIONS, LLC Summary
Screen**



Help with this form

Request a Certificate

The exact name of the Foreign Limited Liability Company (LLC): IRACING.COM MOTORSPORT SIMULATIONS, LLC

Entity Type: Foreign Limited Liability Company (LLC)

Identification Number: 000898201

Old Federal Employer Identification Number (Old FEIN):

Date of Registration in Massachusetts: 06/13/2005

The is organized under the laws of: State: DE Country: USA on: Aug 29 2003

The location of its principal office:

No. and Street: 175 MIDDLESEX TURNPIKE
City or Town: BEDFORD

State: MA Zip: 01730 Country: USA

The location of its Massachusetts office, if any:

No. and Street: 175 MIDDLESEX TURNPIKE
City or Town: BEDFORD

State: MA Zip: 01730 Country: USA

The name and address of the Resident Agent:

Name: DAVID KAEMMER
No. and Street: 175 MIDDLESEX TURNPIKE
City or Town: BEDFORD

State: MA Zip: 01730 Country: USA

The name and business address of each manager:

Title	Individual Name First, Middle, Last, Suffix	Address (no PO Box) Address, City or Town, State, Zip Code
Manager	DAVID KAEMMER	175 MIDDLESEX TURNPIKE BEDFORD, MA 01730 USA
Manager	JOHN W. HENRY	301 YAMATO RD., STE 2200 BOCA RATON, FL 33431 USA

The name and business address of the person in addition to the manager, who is authorized to execute documents to be filed with the Corporations Division.

Title	Individual Name First, Middle, Last, Suffix	Address (no PO Box) Address, City or Town, State, Zip Code
Prior to August 27, 2001, Records can be obtained on Microfilm		

The name and business address of the person(s) authorized to execute, acknowledge, deliver and record any recordable instrument purporting to affect an interest in real property

Title	Individual Name First, Middle, Last, Suffix	Address (no PO Box) Address, City or Town, State, Zip Code
Prior to August 27, 2001, Records can be obtained on Microfilm		

☐ Consent ☐ Manufacturer ☐ Confidential Data ☐ Does Not Require Annual Report
☐ Partnership ☐ Resident Agent ☐ For Profit ☐ Merger Allowed

Select a type of filing from below to view this business entity filings:

ALL FILINGS ☐
Annual Report ☐
Application For Registration ☐
Certificate of Amendment ☐
Certificate of Cancellation ☐

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Comments

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MA SOC Filing Number: 200517603840 Date: 06/13/2005 1:35 PM
JUN-13-2005 13:10 MBBP 781 622 5933 P.02

Registration of Foreign Limited Liability Company
iRacing.com Motorsport Simulations, LLC

PURSUANT TO M.G.L. CHAPTER 156C, §48

1. The federal employer identification number is 20-0208418.
2. The name of the foreign limited liability company is iRacing.com Motorsport Simulations, LLC (the "Company").
3. The Company was originally organized in the State of Delaware on August 29, 2003.
4. The general character of the business of the Company is to engage in computer software sales and design, and in general to do anything permitted by all present and future laws of the Commonwealth of Massachusetts applicable to limited liability companies.
5. The business address of its principal office is 175 Middlesex Turnpike, Bedford, Massachusetts, 01730.
6. The name and business address of each managing member is: David Kaemmer, 175 Middlesex Turnpike, Bedford, Massachusetts, 01730, and John W. Henry, c/o John W. Henry & Company, Inc., 301 Yamato Road, Suite 2200, Boca Raton, FL 33431.
7. The business address of its principal office in the Commonwealth is 175 Middlesex Turnpike, Bedford, MA 01730.
8. The name and business address of its resident agent is David Kaemmer, 175 Middlesex Turnpike, Bedford, MA 01730.
9. There shall be no specific date on which the Company is to dissolve.

IN WITNESS WHEREOF, the undersigned hereby affirms, under the penalties of perjury, the facts stated herein are true as of this 23 day of May, 2005.

iRacing.com Motorsport Simulations, LLC

By:


David Kaemmer, Manager

JUN-13-2005 13:11

MBBP

781 622 5933 P.03

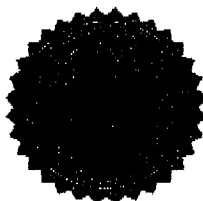
Delaware

PAGE 1

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "IRACING.COM MOTORSPORT SIMULATIONS, LLC" IS DULY FORMED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE SEVENTEENTH DAY OF MAY, A.D. 2005.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL TAXES HAVE BEEN PAID TO DATE.



3698486 8300

050405406

Harriet Smith Windsor
Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 3886002

DATE: 05-17-05

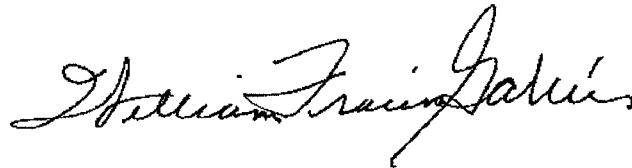
TOTAL P.03

THE COMMONWEALTH OF MASSACHUSETTS

I hereby certify that, upon examination of this document, duly submitted to me, it appears that the provisions of the General Laws relative to corporations have been complied with, and I hereby approve said articles; and the filing fee having been paid, said articles are

deemed to have been filed with me on:

June 13, 2005 1:35 PM

A handwritten signature in cursive script, reading "William Francis Galvin". The signature is written in black ink and is centered on the page.

WILLIAM FRANCIS GALVIN

Secretary of the Commonwealth